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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1969

No. 1804 MISC.

BERT C. CUSHWAY,
Petitioner,

v.

STATE BAR OF GEORGIA
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA

BRIEF FOR RESPONDENT IN OPPOSITION

CLEBURNE E. GREGORY, JR.
Counsel of Record

MALLORY C. ATKINSON
of Counsel

ALEXANDER COCALIS
of Counsel
1000 Fulton Federal Building
Atlanta, Georgia 30303

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OPINIONS BELOW

The opinion of the court below is reported at 120 Ga. App. 371, 170 S.E.2d 732 (1969). Denial of certiorari by the Georgia Supreme Court on November 12, 1969, is unreported.

JURISDICTION

The Petition shows on its face that this is not a proper case for review by this Court. The decision from

which this appeal is taken shows that no constitutional issue of any nature whatsoever was raised by Petitioner. *Cushway v. State Bar of Georgia*, 120 Ga. App. 371, 375, 170 S.E.2d 732 (1969). No constitutional issue having been presented to the Georgia Court of Appeals, no such issue was before the Supreme Court of Georgia when it denied certiorari in the case. Accordingly, Petitioner herein has failed to comply with Rule 23(1)(f) of this Court by showing that a federal question is properly presented.

QUESTIONS PRESENTED

Although Petitioner states he is raising 10 questions, Respondent submits Petitioner has used variant language to pose but three issues:

1.

Is a lawyer against whom disciplinary proceedings are brought entitled to due process?

2.

Is a rule limiting appeal of disciplinary actions to errors enumerated within thirty days of the decision appealed from violative of due process?

3.

Is there deprivation of due process when facts determined at the trial level under the rule of "beyond a reasonable doubt" are deemed conclusive on appeal if supported by "any evidence?"

RULES INVOLVED

The pertinent provisions of the Rules and Regulations for the Organization and Government of the State

Bar of Georgia as promulgated by the Supreme Court of Georgia are set forth herein as Appendix "A".

STATEMENT

Respondent adopts the statement of the court below set forth in the Petition at pp. 28-33.

SUMMARY OF REASONS FOR DENIAL OF WRIT

1. The right of an attorney to due process of law is firmly established and the rules under consideration and the decisions of the Supreme Court of Georgia manifest due and complete adherence to that principle.

2. A procedural rule limiting appellate review of exceptions to the decision of the trial court to those enumerated within thirty days is not violative of due process.

3. A verdict based on evidence, the weight of which was determined at the trial level as being beyond a reasonable doubt, may be sustained on appeal if supported by any evidence without depriving the losing party of due process.

ARGUMENT

I.

The first question—whether a lawyer is entitled to due process—needs no additional answer by this Court. A lawyer is clearly and unequivocally entitled to due process in disciplinary proceedings.

Olah v. Sams, et al, 225 Ga. 497, 169 S.E.2d 790, (1969) *cert. denied* 38 U.S.L.W. 3320 (U.S. Feb. 24, 1970) (No. 940).

Wilson v. State Bar of Georgia, 225 Ga. 343, 168

S.E.2d 584 (1969) *cert. denied* 396 U.S. 957 (1969).

Wallace v. Wallace, 225 Ga. 102, 166 S.E.2d 718 (1969) *cert. denied* 396 U.S. 939 (1969).

Clary v. Mathews, 224 Ga. 82, 160 S.E.2d 338 (1968).

Spevack v. Klein, 385 U.S. 511 (1967).

In Re Ruffalo, 390 U.S. 544, 550 (1968).

Accordingly, the question is settled and requires no further amplification by this Court.

II.

At issue in Petitioner's second group of questions is whether due process requires a Georgia appellate court to consider errors enumerated beyond the time specified by Court rule and after Petitioner had asked for and been denied an enlargement of time. Petition pp. 15, 16.

Georgia follows the general rule and exceptions proferred beyond the prescribed thirty-day period are deemed to be without the jurisdiction of the court. *State Bar of Georgia v. Ellis*, 116 Ga. App. 721(4), 158 S.E.2d 280 (1968).

It is well settled that right of appeal is not essential to due process of law. *Reetz v. Michigan*, 188 U.S. 505 (1903); *Standard Oil Co. v. Missouri*, 224 U.S. 270 (1912). If appeal is permitted, it is competent for the State to prescribe the procedure and condition. *Lott v. Pittman*, 243 U.S. 588 (1917). And the imposition of a period of limitation on the right to appeal accords with this Court's conception of proper procedure. *Brown v. Allen*, 344 U.S. 443, 482-487 (1953), *rehearing denied* 345 U.S. 946 (1953). *Cf.* U.S. Supreme Court Rule 22(4). Accordingly, no new issue is presented by Petitioner for determination by this Court.

III.

Finally, Petitioner suggests that "any evidence" is insufficient as a matter of due process to sustain on appeal the factual determinations made at the trial level where the fact finders were required to be convinced beyond a reasonable doubt. It is elementary hornbook law that factual determination is made by the trial court and that the trial court's decision should not be disturbed on appeal if supported by competent evidence. It is not for the appellate court to assay an independent evaluation of evidence and that is particularly true with regard to the Supreme Court of the United States. *United States v. Johnson*, 268 U.S. 220, 227 (1925); *Graves Tank & Manufacturing Co. v. Linde Air Products Company*, 339 U.S. 605 (1950), *rehearing denied*, 340 U.S. 845 (1950). The facts of this case were determined within the course prescribed by court rule and such facts supported by evidence may be deemed conclusive on appeal without violating due process. *Cf. Voehl v. Indemnity Insurance Co.*, 288 U.S. 162, 166 (1933).

CONCLUSION

For the reasons stated it is respectfully submitted that the Petition for writ of certiorari to the Supreme Court of Georgia be denied.

Cleburne E. Gregory, Jr.
Counsel of Record

Mallory C. Atkinson
of Counsel

Alexander Cocalis
of Counsel

1000 Fulton Federal Building
Atlanta, Georgia 30303

PROOF OF SERVICE

I certify I have this day served counsel for Petitioner with copy of the within and foregoing Brief for Respondent in Opposition by placing same in the United States Mail in a properly addressed envelope containing first class postage thereon.

This 2nd day of April, 1970.

/s/ CLEBURNE E. GREGORY, JR.
Cleburne E. Gregory, Jr.

1000 Fulton Federal Building
Atlanta, Georgia 30303
577-5100

APPENDIX "A"

RULES AND REGULATIONS FOR ORGANIZATION AND GOVERNMENT OF STATE BAR OF GEORGIA

as amended

PART IV

DISCIPLINE

Chapter 1

DISBARMENT, SUSPENSION, AND REPRIMAND

Rule 4-101. Enforcement of Professional Standards—The State Bar of Georgia is hereby authorized to maintain and enforce, as set forth in Rules 4-102 and 4-102.1, standards of professional conduct to be observed by its members and to punish the violation thereof by disbarment, suspension for a specified period of time, or reprimand, either public or private.

Rule 4-102. Disciplinary Action; Grounds—Disciplinary action which may be taken may include disbarment, suspension, or reprimand; and power to administer a greater punishment shall include the power to administer the lesser, the severity of the punishment in each case being made to depend upon the gravity of the offense, the wilfulness of the infraction and the object to be achieved, either the chastisement of the offender or the protection of the public.

The following shall constitute grounds for disbarment under this rule:

(a) Fraud or concealment of a material fact in procuring admission to the bar, or conduct which, if known, would have precluded admission to the bar;

(b) Disbarment under the laws of another state;

(c) Final conviction of any felony or misdemeanor involving moral turpitude, in either case the record of such conviction being conclusive evidence thereof;

(d) Failure to pay any final judgment or rule absolute rendered against such attorney for money collected by him as attorney within ten days after the time appointed in the order of judgment. In such case the record of the judgment is conclusive evidence unless obtained without valid service of process;

(e) Solicitation of legal employment;

(f) Barratry as now or hereafter defined by law;

(g) Embracery, which shall include any attempt, whether successful or not, to influence a jury corruptly to one side, by promises, persuasion, entreaties, money, entertainments, and the like;

(h) Professional conduct involving moral turpitude sufficient to shock the common sense of decency;

(i) Obstruction of justice such as, by way of illustration, suppression of facts, or secreting of witnesses;

(j) Knowingly accepting employment in any case in which the attorney has a conflict of interest or any interest adverse to that of his client unless there be a full disclosure to all parties concerned. Accepting employment against a former client shall fall within this rule where the use of any confidential information is involved.

(k) Failing to account for trust property, including money, held in any fiduciary capacity;

(l) The formation of a partnership in the practice of law with persons who are nonlawyers or the division of attorney's fees with nonlawyers;

(m) Any arrangement or agreement with or through an intermediary having independent or pecuniary inter-

est whereby the attorney is beholden to the intermediary rather than to the ultimate client and which divides the attorney's loyalty to the ultimate client;

(n) Maintenance; including any proposal or agreement, in advance of employment, to defray the expense of litigation. A lawyer may in good faith advance expenses after employment as a matter of convenience, but subject to reimbursement.

Rule 4-102.1. Disciplinary Action; Additional Grounds—The following shall constitute grounds for reprimand only under this rule:

(a) Negotiating directly with an opposite party or person at interest who is represented by counsel concerning a case rather than by negotiating through the counsel employed;

(b) The purchase by an attorney of any interest in the subject matter of litigation which he is conducting;

(c) Any action whereby an attorney abuses or takes advantage of the confidence reposed in him by his client;

(d) Accepting from others any compensation, commission, rebate, or advantage in connection with a case when detrimental to his client, without the knowledge and consent of his client after full disclosure;

(e) Withdrawal from employment once assumed without cause or justification and/or refusal upon withdrawal to refund such part of the retainer paid as has not been clearly earned;

(f) The permitting, by any lawyer, of the use of his services or name in aid of or to make possible the unauthorized practice of law by any lay agency, personal or corporate.

A finding of a third or subsequent reprimand under

these rules shall, in and of itself, constitute discretionary grounds for suspension or disbarment. The grievance tribunal which recommends such reprimand or reprimands may exercise this discretionary power in making its recommendations and the State Disciplinary Board may exercise this discretionary power when the question is appropriately before that Board.

Rule 4-103. Mental Incapacity—Want of a sound mind or senility, state of habitual intoxication or drug addiction, any one to the extent of impairing competency as an attorney, when found to exist under the procedures outlined in these rules shall constitute grounds for removing the name of an attorney from the roll of attorneys and the attorney from the practice of law. Notice of final judgment taking such action shall be given by the State Disciplinary Board as provided in Rule 4-214 (a).

Chapter 2

DISCIPLINARY PROCEEDINGS

Rule 4-201. State Disciplinary Board—The power to discipline and punish members of the State Bar of Georgia for professional misconduct is hereby vested in a State Disciplinary Board which shall consist of the president of the State Bar of Georgia and one member from each congressional district of the state to be appointed by the President with the approval of the Board of Governors. Three of the initial members of the Board shall be appointed for one-year terms, three shall be appointed for two-year terms, and four shall be appointed for three-year terms. Their successors shall be appointed for terms of three years from the date of expiration of their respective terms of office, except that any person appointed to fill a vacancy occasioned by resignation, death, disqualification, or disability, shall serve only for the unexpired

term of the member he replaces unless he is reappointed. Immediately after the initial members of the Board are appointed they shall enter upon their duties. The Board shall annually elect its chairman. A majority of the Board shall constitute a quorum and a majority of a quorum shall be authorized to act except that any judgment of the Board suspending or disbarring a member shall require the affirmative vote of at least six members of the Board, with not more than two negative votes. A member of the State Disciplinary Board who has served a full three-year term shall not be eligible to succeed himself for the next succeeding term.

Rule 4-202. Powers and Duties—In accordance with these rules the State Disciplinary Board shall have the following powers and duties:

(a) To receive and evaluate any and all written complaints against members of the State Bar, and where such complaints are orally received or informally drawn, to frame such charge or complaint as shall conform to the requirements of these rules. A copy of any complaint serving as the basis for proceedings before a grievance tribunal or the State Disciplinary Board shall be furnished by mail to the member complained against. Each complaint received and serving as the basis for proceedings before a grievance tribunal or the State Disciplinary Board shall be docketed and assigned a filing number by the Board. Every complaint, other than one initiated by the State Disciplinary Board on its own motion, before serving as the basis for proceedings before a grievance tribunal or the State Disciplinary Board, shall be verified by the complainant;

(b) To initiate complaints on its own motion, to require additional information from a complainant, where appropriate, and to dismiss and reject such complaints as

to it may seem unjustified, frivolous, or patently unfounded; provided, however, that the rejection of a complaint by such Board shall not deprive the complaining party of any right of action he might otherwise have at law or in equity against the party complained against.

(c) The duties of the Board enumerated in subparagraphs (a) and (b) hereof may be delegated to the chairman or such other member as the Board may designate, subject to review by and the approval of the Board;

(d) To conduct investigations, to take evidence, to hold hearings, and to refer complaints to grievance tribunals for such action as hereinafter provided;

(e) Said Board, subject to judicial review as hereinafter provided, shall have power to suspend, remove, or disbar members, to discipline them by public or private reprimand, and to pass upon petitions for reinstatement or reversal of any disciplinary order which it may have imposed;

(f) Said Board shall withdraw any complaint from any grievance tribunal if the grievance tribunal fails to function in accordance with these rules, and thereafter it may handle the complaint itself or refer it to another grievance tribunal;

(g) To adopt forms for formal complaints, subpoenas, notices, applications for reinstatement, and other written instruments necessary or desirable under these rules;

(h) To extend any time limit provided herein;

(i) To prescribe its own rules of conduct and procedure.

Rule 4-203. Grievance Tribunals; Appointment—At least one grievance tribunal, and additional grievance

tribunals in the discretion of the Board of Governors of the State Bar of Georgia, shall be created in each judicial circuit, each comprised of three active members of the State Bar of Georgia residing in such circuit to be appointed by the president of the State Bar of Georgia with the approval of the Board of Governors. One of the initial members of each tribunal shall be appointed for a one-year term, one shall be appointed for a two-year term, and one shall be appointed for a three-year term. Their successors shall be appointed for terms of three years from from the date of expiration of their respective terms of office, except that any person appointed to fill a vacancy occasioned by resignation, death, disqualification or disability shall serve only for the unexpired term of the member he replaces unless he is reappointed. The president of the State Bar of Georgia shall have the authority to make such appointments filling any such vacancy. The president of the State Bar of Georgia shall have the authority to designate any member of any grievance tribunal in the same or an adjoining circuit to serve on any particular complaint in the place of any member of a grievance tribunal to which the complaint has been referred where a member of such tribunal is disqualified or is for any reason unable or unwilling to serve in such complaint.

Any complaint not unjustified, frivolous or patently unfounded shall be referred by the State Disciplinary Board to a grievance tribunal in the circuit where the member complained against then resides.

Complaints against members who are nonresidents of the state shall be tried in the county from which the complaint arose.

Rule 4-203. 1. Grievance Tribunals; Powers and Duties—In accordance with these rules a duly consti-

tuted tribunal shall have the following powers and duties:

(a) To perform all those acts and duties specifically enumerated in Rules 4-204 — 4-210 both inclusive;

(b) To grant continuances and to extend any time limit provided for herein as to any matter before such grievance tribunal;

(c) Jurisdiction over a complaint having once been placed in one grievance tribunal shall, unless transferred as hereinafter provided or withdrawn as provided in Rule 4-202 (f), remain in such tribunal notwithstanding any membership change in such tribunal either through the designation of a successor member or the designation of a temporary member to replace a regular member disqualified, unable or unwilling to serve;

(d) Where a grievance tribunal is satisfied that the residence of the member complained against is in a circuit other than the circuit of such tribunal, then such tribunal is authorized, with the approval of the chairman of the State Disciplinary Board, to transfer the pending complaint to a grievance tribunal in the circuit wherein the member complained against resides;

(e) Where a grievance tribunal has before it a complaint against a member and is informed of the pendency against the same member before the State Disciplinary Board of another complaint, the tribunal is authorized to defer action on the complaint before it pending receipt of the later complaint and then proceed with consideration of both or the several complaints, jointly or severally, or the tribunal is authorized to proceed with consideration of the complaint before it, and defer action on the subsequent complaint or complaints;

(f) Where there are multiple complaints growing

out of different transactions, whether they involve one or more complainants, a grievance tribunal may be authorized to hear and determine action on these complaints, as separate counts, and proceed to make recommendations on each count as constituting a separate offense.

Rule 4-204. Duties of Grievance Tribunal; Preliminary Investigation of Complaints—

(a) Within a reasonable time after receiving a complaint from the State Disciplinary Board, the grievance tribunal shall cause a preliminary investigation to be made to determine if probable cause exists for the lodging of a formal complaint. The member complained against shall be afforded an opportunity to be heard with respect to the complaint, either in person or by affidavit.

Within ten days after receipt by the member complained against of such notice of an opportunity to be heard such member may challenge the competency, qualifications or impartiality of the tribunal or of any member of the tribunal. Such challenge stating the grounds upon which it is based shall be filed in writing with the district member of the State Disciplinary Board from the district where the proceeding is pending, which district member shall make the initial determination on such challenge and pass upon all questions therein raised. Such determination is subject to review thereafter by the State Disciplinary Board at such time as consideration is given by such Board to the report of the grievance tribunal prescribed in Rule 4-210, and thereafter to judicial review as hereinafter provided.

(b) If upon preliminary investigation to the grievance tribunal shall find that probable cause does not exist, it shall thereupon recommend to the State Disciplinary Board that the complaint be dismissed, giving its reasons therefor, and at the same time send a copy of its

recommendations to the member complained against.

(c) If the grievance tribunal finds that probable cause does exist, or if the State Disciplinary Board disapproves its recommendation in any case that probable cause does not exist and directs it to proceed further, it shall proceed as hereinafter provided.

Rule 4-205. Grievance Tribunal; Formal Complaint—Within thirty days after a finding of probable cause, a formal complaint shall be prepared which shall specify with reasonable particularity the act complained of and the grounds for disciplinary action. A formal complaint shall include the names and addresses of witnesses so far as then known. A copy of the formal complaint shall be served upon the member complained against, either in person or by registered or certified mail, and a copy thereof shall at the same time be transmitted to the State Disciplinary Board.

At all stages of the proceeding both the member complained against and the State Bar of Georgia may be represented by counsel. Counsel representing the State Bar of Georgia shall be authorized to prepare and sign notices, pleadings, motions, complaints and certificates for and in behalf of the State Bar of Georgia.

Rule 4-206. Election of Manner of Trial; Framing of Issues—Within a reasonable time after the service of the formal complaint, not to exceed sixty days, the grievance tribunal shall arrange a preliminary meeting, in the nature of a pretrial, at which the member complained against may challenge the legal sufficiency of the complaint, and if the complaint is sustained as legally sufficient may file defensive pleading and shall elect: (a) to have the grievance tribunal hear and decide all issues of fact as well as law; or (b) to have any material issues of

fact determined by a jury in the superior court of the county of his residence, in which event the parties shall then frame separate special questions of fact to be submitted to the jury. In case of disagreement between the parties as to the form of the questions to be submitted, the superior court shall frame such questions, based upon the pleadings and the evidence at the time of trial. If the member complained against refuses to make the election above specified within fifteen days, he shall be deemed to have elected to have the grievance tribunal hear and decide all issues of fact. The grievance tribunal shall pass upon all questions concerning the sufficiency of the complaint, subject to review by the State Disciplinary Board and to judicial review as hereinafter provided.

Rule 4-207. Trial Before Grievance Tribunal—If the member complained against shall have elected to have the complaint tried before the grievance tribunal without a jury, said tribunal shall proceed at a convenient time, and within not more than thirty days after the election by the member complained against as referred to in Rule 4-206 has become complete, and after at least fifteen days notice to the member complained against, to hear the case, which shall be stenographically reported and transcribed. The tribunal may, if it so desires, designate one or more of its members to conduct the hearing. When the hearing is complete, the tribunal shall proceed to make findings of fact and conclusions of law and file its report with the State Disciplinary Board as hereinafter provided.

Rule 4-208. Proceedings in Superior Court; Jury Trial—If the member complained against shall have elected to have material issues of fact determined by a jury in the superior court, the grievance tribunal shall file with the clerk of the superior court of the county of his residence a complete copy of the record in said case,

including a list of the special questions of fact upon which a jury verdict is sought. Upon the filing of such record the superior court shall hear and dispose of any appropriate pleadings challenging the sufficiency of the complaint or the answer and shall enter an appropriate order thereon which shall be reviewable by the Court of Appeals on behalf of either party as in other cases. Upon the pleadings being settled and when the next civil jury shall be empaneled, all issues remaining in the case shall be tried. On the trial of such issues the jury shall not pass upon the culpability of the member complained against or upon the question of whether punishment shall or shall not be imposed, but the jury shall in each case render a special verdict giving specific answers to the special questions of fact which shall be submitted to it by the court. All such trials shall be submitted to it by the court. All such trials shall be stenographically reported and transcribed. Alleged errors in the trial may be reviewed on ultimate appeal as provided in Rule 4-213 hereof but there shall be no direct appeal from such proceedings except as to the sufficiency of the complaint as hereinbefore provided.

Rule 4-209. Proceedings in Superior Court; Transmission of Findings to Grievance Tribunal—Upon the rendition of a verdict in the superior court the clerk of said court shall promptly transmit a copy of the findings of the jury to the grievance tribunal certified under the seal of the superior court. Copies of the findings of the jury shall be transmitted to the member complained against or his counsel and to counsel for the State Bar in the proceedings.

Rule 4-210. Further Proceedings by Grievance Tribunal; Report—When the facts have been found, either by jury verdict if elected, or by the grievance tribunal if no jury trial has been demanded, or partly by a jury

verdict and partly by the grievance tribunal, the grievance tribunal shall thereupon make its report to the State Disciplinary Board by lodging the same with the chairman, which report shall contain the following:

(a) A complete transcript of the evidence adduced either before the grievance tribunal or the jury, or both, as the case may be;

(b) The findings of fact, whether by a jury or by the grievance tribunal, or partly by both;

(c) The conclusions of law;

(d) Its recommendations to the State Disciplinary Board as to what disciplinary action should be taken, if any.

Rule 4-211. Findings by the State Disciplinary Board—Upon receipt by the State Disciplinary Board of the report from a grievance tribunal, including its recommendations, the State Disciplinary Board shall consider the record in its entirety, including the recommendations of the grievance tribunal, and shall determine what disciplinary action shall be taken, if any. In making such determination, findings of fact made by a jury in the superior court shall be conclusive if supported by any evidence. Findings of fact made by the grievance tribunal shall not be binding upon the State Disciplinary Board and may be reversed by them on the basis of the record submitted by the grievance tribunal. There shall be no de novo hearing before the State Disciplinary Board except by unanimous consent of the Board and the member complained against, but the Board may grant rehearings, or new trials, or hear additional evidence, for such reasons, in such manner, on such issues, and within such time as it may prescribe.

Rule 4-212. Judgment—The record in the case and

the findings of the State Disciplinary Board shall be transmitted by it to the clerk of the superior court of the county in which the lawyer complained against resides, and, unless exceptions to such findings shall be made within thirty days from the time said findings are filed with the clerk, the same shall automatically be made the judgment of the superior court. Exceptions may be taken to such findings by either the lawyer complained against or by the State Bar of Georgia.

Rule 4-213. Judicial Review—Such exceptions as are provided in Rule 4-212 shall be addressed to matters of law only, and the findings of fact, whether by jury verdict or otherwise, shall be conclusive if supported by any evidence. From a decision of the superior court on such exceptions, appeal shall lie to the Court of Appeals as in other cases, with such right of appeal vested in the member complained against and in the State Bar of Georgia.

Rule 4-214. Notice of Punishment or Acquittal—

(a) Upon a final judgment of disbarment or suspension, notice of the action taken shall be given by the State Disciplinary Board to the clerks of all courts of record in this state and to the secretary of the State Bar of Georgia, and the name of the attorney in question shall be stricken from the rolls of said courts and from the rolls of the State Bar of Georgia either permanently, in case of disbarment, or for the prescribed period in case of suspension. Private reprimand shall be administered before the State Disciplinary Board by the chairman thereof. Public reprimand shall be prepared by the State Disciplinary Board and shall be read in open court by the judge of the superior court in the county in which the member complained against resides and in his presence. The court shall have power to compel his attendance.

(b) In the event of a final judgment of acquittal,

the State Disciplinary Board shall, if directed by the member complained against, give notice thereof to the clerk of the superior court of the county in which the member complained against resides. The member may give reasonable notice of the judgment of acquittal.

Rule 4-215. Procedures—

(a) **Oaths.** Before entering upon his duties as herein provided each member of the State Disciplinary Board shall subscribe to an oath to be administered by any person authorized to administer oaths under the laws of this state, such oath to be in writing and filed with the secretary of the State Bar of Georgia. The form of such oath shall be:

> "I do solemnly swear that I will faithfully and impartially discharge and perform all of the duties incumbent upon me as a member of the State Disciplinary Board of the State Bar of Georgia according to the best of my ability and understanding and agreeable to the laws and constitution of this state and the Constitution of the United States, so help me God."

Before entering upon their duties, each member of a grievance tribunal shall likewise subscribe to an oath, the form to be as follows:

> "I do solemnly swear that I will faithfully and impartially discharge and perform all of the duties incumbent upon me as a member of this grievance tribunal of the State Bar of Georgia, according to the best of my ability and understanding and agreeable to the laws and constitution of this state and the Constitution of the United States, so help me God."

(b) **Witnesses and Evidence; Contempts.** The member complained against shall have the right to require the

issuance of subpoenas for the attendance of witnesses to testify or to produce books and papers, as herein provided, together with the further right to take depositions in the same manner and under the same conditions as the Board or tribunal may do. The State Disciplinary Board or a grievance tribunal shall have power to compel the attendance of witnesses and the production of books, papers, and documents relevant to the matter under investigation, by subpoena issued as hereinafter provided. Whenever any person subpoenaed to appear and give testimony or to produce books, papers or documents required by such subpoena shall refuse to appear or testify before said State Disciplinary Board or grievance tribunal, or to answer any pertinent or proper question, or whenever any person in attendance upon a probable cause hearing, a preliminary meeting in the nature of a pretrial or an evidentiary hearing shall willfully and flagrantly violate a lawful directive of the chairman or presiding officer, then any such person shall be deemed in contempt of said Board or tribunal, and it shall be the duty of the chairman or presiding officer of said Board or tribunal to report the fact to the superior court in and for the county in which said investigation, trial, or hearing is being held; and thereupon, the said court shall issue an attachment in the form usual in said superior court, directed to the sheriff of said county commanding him to attach such person and forthwith bring him before such court. On the return of said attachment and the production of the person attached, the superior court shall have jurisdiction of the matter and the person may purge himself of the contempt in the same way, and the proceedings shall be had and the penalties may be imposed and the same punishment inflicted as in the case of a witness subpoenaed to appear and give evidence on the trial of a civil cause before said superior court under the existing laws of the state. Any member of said Board or

tribunal shall have power to administer oaths and affirmations and to issue any subpoena herein provided for. The power to compel the attendance of witnesses shall be as now or hereafter provided by law in civil cases. Depositions may be taken by the party complained against, or by the Board or tribunal in the same manner and under the same provisions as may now be done under the laws of Georgia in civil suits, and such depositions may be used upon the trial of an investigation or hearing in the same manner as such depositions are now admissable in evidence in civil cases under the laws of Georgia.

All witnesses attending any hearing provided for under these rules shall be entitled to the same fees as now are allowed by law to witnesses attending trials in civil causes in the superior courts of this state under subpoena, and said fees shall be assessed against the parties to the proceedings under the rule of law applicable to civil suits in the superior courts of this state.

(c) **Hearings.** The hearings on all complaints and charges against members of the Bar before grievance tribunals shall be held in the county of residence of the person complained against, unless he othewise agrees. The State Disciplinary Board and grievance tribunals shall, upon the evidentiary hearings of all complaints, cause to be taken and have transcribed the evidence and proceedings.

(d) **Privacy.** All hearings, investigations, and other disciplinary proceedings provided for herein shall be private at all stages, unless the member complained against shall otherwise elect. It shall be considered an act of professional misconduct for any attorney who is a member of the State Disciplinary Board or any grievance tribunal, or who is otherwise connected with disciplinary proceedings in any way, to make an unauthorized publication or revelation of the same. The provisions of this section shall

have no application to any particular case after that case has been brought as herein provided to the superior court.

(e) **Supersedeas.** Where an order of judgment has been entered against an attorney complained against, as herein provided, a supersedeas shall be granted by the State Disciplinary Board so that no disciplinary action taken shall become effective until all rights of review have been exhausted and the judgment in such case is final.

(f) **Rules of Evidence.** In all proceedings under this chapter, including jury trials, the burden of proof shall be on the State Bar of Georgia and the procedures and rules of evidence applicable in civil cases shall apply except that the quantum of proof required shall be beyond a reasonable doubt.

(g) **Pleadings and Copies.** Copies of all pleadings filed by the State Bar of Georgia shall be transmitted to the member complained against and copies of all pleadings filed by the member complained against shall be transmitted to counsel for the State Bar of Georgia in the particular proceeding and to the General Counsel of the State Bar of Georgia. Original pleadings shall be transmitted to the chairman of the State Disciplinary Board or the chairman of the grievance tribunal as the case may be.

Rule 4-216. Costs—Any person filing exceptions in the superior court to findings of the State Disciplinary Board shall pay all accrued costs, including the reporter's fee and costs of transcripts, as a condition precedent to the filing of such exceptions, unless a pauper's affidavit shall be filed.

Rule 4-217. Advisory Opinions—The State Disciplinary Board shall be authorized to render opinions con-

cerning a proper interpretation of the Canons of Ethics or any of the grounds for disciplinary action as applied to a given state of facts, and to publish and disseminate the same. It shall be a complete defense to any complaint under these rules that the member complained against has acted in accordance with and in reliance upon any such advisory opinion.

Rule 4-128. Limitation—No proceedings under these rules shall be instituted or prosecuted unless such proceedings shall be instituted or begun within four years after the commission of the act complained of, provided, however, this limitation shall not run so long as the offender or the offense is unknown, and provided further that this limitation shall not run during any period of time as to which a member's name is removed from the roll of attorneys and he is removed from the practice of law pursuant to the terms of Rule 4-103.

Chapter 3
REINSTATEMENT

Rule 4-301. Petition for Reinstatement—A petition for reinstatement under these rules shall be in writing, verified by petitioner, and shall be addressed to the State Disciplinary Board, together with ten copies thereof, one for each member of the Board. The petition shall set forth the full name, age, residence, and mailing address of the petitioner; the offense or misconduct for which he was disbarred or suspended; a concise statement of the facts claimed to justify reinstatement; the name and mailing address of the complainant in the original disciplinary proceeding, if that proceeding was conducted under these rules; and such other information as may be required from time to time by the State Board. The State Disciplinary Board shall docket the petition and assign it a filing number and shall promptly mail a copy of the petition to

the last known address of the complainant in the original disciplinary proceeding if that proceeding was conducted under these rules; provided, however, that a petition for reinstatement shall not be considered by the State Disciplinary Board unless two-thirds of the presently active members of the State Bar resident of those counties which comprised the circuit where the disciplined attorney was practicing at the time he was disciplined shall approve the same in writing.

Rule 4-302. Investigation, Hearing, and Further Proceedings—The State Disciplinary Board shall promptly cause an investigation to be conducted, and the petition shall within a reasonable time be assigned for a hearing either before the State Board or before such grievance tribunal as may be designated by the State Board. The hearing and further proceedings shall generally be in accordance with the provisions of these rules applicable to disciplinary proceedings except that the petitioner shall not be entitled to a jury trial. The State Disciplinary Board shall determine whether the petition shall be granted or denied. If reinstatement is granted, upon request of the member reinstated notice thereof shall be given by the Board to the clerks of all courts of record in this state and to the secretary of the State Bar of Georgia.

Rule 4-303. Filing Fee—The State Disciplinary Board shall have the power, in its discretion, to require a reasonable filing fee for any petition for reinstatement to cover the cost of conducting an investigation and to defray other expenses to be incurred by reason thereof.

Rule 4-304. Minimum Time—No petition for reinstatement shall be filed within one year following disbarment or suspension, or within two years following an adverse decision upon a previous petition for reinstatement filed by the same person.